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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

70-90

No. ~~1412~~

JOHN SCHILB, et al.,

Plaintiffs-Appellants,

vs.

VINCENT P. KUEBEL, as Clerk of the Circuit Court of St. Clair County, et al.,

Defendants-Appellees.

Appeal from the Supreme Court of the State of Illinois

BRIEF FOR APPELLANTS

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Appeal from the Supreme Court of the State of Illinois

BRIEF FOR APPELLANTS

OPINIONS BELOW

The majority and dissenting opinions of the Supreme Court of Illinois (A. 30-47; Rec. 8) are reported at 46 Ill. 2d 538; 264 N.E. 2d 377.

JURISDICTION

This action was instituted by John Schilb, individually and for all others similarly situate, who were charged bail costs under Section 110-7(f) of the Illinois Criminal Code (Ill. Rev. Stat. 1963 etc. Ch. 38, Par. 110-7(f)) (App. B, iii-xiii).

The complaint sought a declaratory judgment that Section 110-7(f) violates the Due Process and Equal Protection of the Laws Clauses of the Fourteenth Amendment to the Constitution of the United States (A. 4-13; Rec. C-2—C-8). The Circuit Court of St. Clair County, Illinois, specifically held Section 110-7(f) of the Illinois Criminal Code constitutional (A. 22-23; Rec. C-18). An appeal was taken to the Supreme Court of the State of Illinois which on October 7, 1970, affirmed the decision of the trial court (A. 30-44; Rec. 8).

A Petition for Rehearing was filed (A. 49; Rec. 10) and thereafter, on December 3, 1970, the Petition was denied (A. 50-51; Rec. 11) and the dissenting opinion of Justice Thomas E. Kluczynski and Justice Walter V. Schaefer filed (A. 30, 44-47; Rec. 8). A Motion for Reconsideration of the denial of the Petition for Rehearing was denied on January 14, 1971 (A. 51-52; Rec. 13).

The Notice of Appeal to the Supreme Court of the United States was filed on February 12, 1971 (A. 54; Rec. 16). The Jurisdictional Statement and Record were filed and docketed on March 1, 1971, and probable jurisdiction noted on April 26, 1971.

The jurisdiction of the Supreme Court of the United States to review the judgment of the Supreme Court of Illinois by appeal is invoked and conferred by 28 U.S.C.

1257(2), for the validity of a statute of the State of Illinois was drawn in question on the grounds of being repugnant to the Constitution of the United States and the decision of the Supreme Court of the State of Illinois is in favor of its validity.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This cause directly involves the constitutionality of the bail cost retention provision of Section 110-7(f) of Article 110 of the Illinois Criminal Code (Ill. Rev. Stat. 1963 etc. Ch. 38, Par. 110-1 *et seq.*), in relation to the Due Process and Equal Protection of the Laws Clauses of the Fourteenth Amendment to the Constitution of the United States.

The Fourteenth Amendment to the Constitution of the United States is appended hereto as Appendix A.

Article 110 of the Illinois Criminal Code is appended hereto as Appendix B.

QUESTIONS PRESENTED

The following questions relating to the Due Process and Equal Protection of the Laws Clauses of the Fourteenth Amendment to the Constitution of the United States are presented by this appeal:

1. May a State impose a bail cost on only one segment of a class gaining pretrial release?

2. May a State impose bail costs on the poor and non-affluent while imposing no like costs on the rich and affluent?

3. May a State impose a bail cost on the innocent?

STATEMENT OF THE CASE

The Seventy Third General Assembly of the State of Illinois revised its statutory bail procedures by enacting Article 110 of the Illinois Criminal Code (Ill. Rev. Stat. 1963, Ch. 38, Par. 110-1 *et seq.*) (App. B, iii-xiii).

Article 110 provides for the pretrial release of an accused in one of three ways: his individual recognizance (Sec. 110-2) (App. B, iii); by deposit of 10% of the full amount of bail (Sec. 110-7) (App. B, v-vii); or, by deposit of cash, stocks or bonds in the full amount of bail, or pledging real estate in double the amount of bail (Sec. 110-8) (App. B, vii-xi). This statute further provides for the imposition of a bail cost on those released on deposit of 10% of bail (Sec. 110-7(f)) (App. B, vi).

John Schilb, a resident of Belleville, St. Clair County, Illinois, was arrested on January 16, 1969 on two charges. He gained his pretrial freedom by depositing $50.00 and $25.00 and on June 6, 1969 was found guilty on one of the charges and not guilty on the other charge. He paid $5.00 and $2.50, or a total of $7.50 pursuant to the above statutory provision (A. 17-22; Rec. C-14—C-17).

On July 29, 1969, John Schilb, individually and on behalf of all others similarly situate, as a class, filed a Complaint in Chancery in the Circuit Court of St. Clair County alleging the bail cost retention provision of Section 110-7(f) of the Illinois Criminal Code ". . . is unconstitutional and deprives said defendants (in criminal proceedings) of their property without due process of law, and in violation of equal protection of the laws contrary to the 14th Amendment to the Constitution of the United States ... ." (A. 4-13; Rec. C-2—C-8).

On January 6, 1970, the Circuit Court of St. Clair County found the issues against the plaintiffs, and "particularly finds Section 110-7(f) of the Criminal Code proceedings is constitutional." (A. 22-23; Rec. C-18). A direct appeal was taken to the Supreme Court of Illinois (A. 24; Rec. C-20), and on October 7, 1970, the decision of the Trial Court was affirmed (A. 47-49; Rec. 9).

This appeal is from the aforementioned decision of the Supreme Court of the State of Illinois (A. 54; Rec. 16).

SUMMARY OF ARGUMENT

Section 110-7(f) of the Criminal Code of Illinois (Ill. Rev. Stat. 1963, Ch. 38, Par. 110-7(f)) (App. B, vi) imposes bail costs on those gaining pretrial release pursuant to the deposit of 10% of the full amount of bail (Sec. 110-7) (App. B, v-vii). No like costs are imposed on those gaining pretrial release on their individual recognizance (Sec. 110-2) (App. B, iii), or those depositing the full amount of bail in cash, stocks or bonds, or double the amount in real estate (Sec. 110-8) (App. B, vii-xi).

John Schilb, who paid costs pursuant to said statute, individually and on behalf of all persons similarly situate, submit that the cost imposition provision of Section 110-7(f) contravenes and violates the Due Process and Equal Protection of the Laws Clauses of the Fourteenth Amendment to the Constitution of the United States, and respectfully pray the decision of the Supreme Court of Illinois, holding the imposition of said bail costs constitutional, be reversed for:

1. The imposition of the bail cost on only one segment of the class gaining pretrial release creates an "in-

vidious discrimination" by imposing a burden on this segment while imposing no similar burden on others gaining pretrial release. *Rinaldi* v. *Yeager,* 384 U.S. 305 (1966);

2. The imposition of the entire burden of supporting the Illinois Bail System on those persons gaining pretrial release who are least able to afford it—the poor and non-affluent (*Bandy* v. *U.S.*, 81 S. Ct. 197. (1966))—penalizes that segment in a quest for justice due to their lack of wealth, *Griffin* v. *Illinois* 351 U.S. 12 (1956); and,

3. The imposition of bail costs upon the innocent violates the most rudimentary concept of Due Process (*Giaccio* v. *Pennsylvania,* 382 U.S. 399 (1966).

ARGUMENT

THE IMPOSITION OF STATUTORY BAIL COSTS IN ILLINOIS CONTRAVENES AND VIOLATES THE DUE PROCESS AND EQUAL PROTECTION OF THE LAWS CLAUSES OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

In a climate of criticism and growing discontent with the operation of bail procedures in this country in the 1920's many public bodies, private foundations, and concerned individuals undertook bail studies which dealt in depth with needed reforms.[1] However, it was not until the early 1960's that any corrective legislation was enacted.

The Seventy Third General Assembly of the State of Illinois revised its bail procedure, in 1963, by enacting Article 110 of the Illinois Criminal Code (Ill. Rev. Stat. 1963, Ch. 38, Par. 110-1 *et seq.*) (App. B, iii-xiii) which provides for the pretrial release of an accused:

1. On his individual recognizance (Sec. 110-2) (App. B, iii);

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1. Pound, *Criminal Justice in Cleveland* (1924); Beeley, *The Bail System in Chicago* (1927); National Commission on Law Observance and Enforcement, Surveys Analysis 89 (1931); Weintraub, *Why in Kings County?* The Pleader 5-6 (March 1938); Administration of Bail in Philadelphia, 102 U. Pa. L. Rev. 1031 (1954); A Study of the Administration of Bail in New York City, 106 U. Pa. L. Rev. 685 (1958); Freed and Wald, *Bail in the United States* (1964).

2. By the deposit of 10% of the full amount of bail (Sec. 110-7) (App. B, v-vii);

3. By the deposit of cash, stocks or bonds in the full amount of bail, or pledging real estate in double the amount of bail (Sec. 110-8) (App. B, vii-xi).

In addition, Article 110 imposes a bail cost (Sec. 110-7(f)) "to cover costs of handling bail costs and deposits"[2] upon those released under Section 110-7, but imposes no like costs upon those released under either Sections 110-2 or 110-8.

Illinois does not afford General Assembly reports or hearings, compiled or conducted, preliminary to the enactment of legislation. However, the reasons for the passage of Article 110 can in part be deduced from the Congressional Record relative to similar bills which were eventually enacted into law as the Bail Reform Act of 1966 (18 U.S.C. 3141-3152).

Certain bills (S 2838, S 2839, S 2840) were introduced into the Eighty Eighth Congress (1964), which were the Federal counterpart of Article 110. Senate Bill 2840 (App. C, xiv-xvi) provided for the retention of 10% of the 10% of cash deposit exactly as does Section 110-7(f) of the Illinois Criminal Code. These bills were retained in Committee and the principles thereof were resubmitted in the Eighty Ninth Congress (1965) as S 646, S 647, S 648, and finally S 1357 as an expanded and omnibus bail reform bill.

Senate Bill 1357 embodied all of the substance of Article 110 of the Illinois Criminal Code—with one significant exception—that bill removed the 10% retention of the

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2. Committee Comments, 1963 (Ill. S.H.A., Ch. 38, Sec. 110-7, p. 316).

cash deposit to defray bail bond costs (18 U.S.C. 3146(a)(3)). Thus, under S 1357 bail costs were not to be imposed on anyone gaining pretrial freedom.

The purposes for the passage of S 1357 are enumerated within the Bill itself (Vol. 112, Con. Rec., Eighty Ninth Congress, 2d Session, pp. 12499, 12500):

"FINDINGS AND PURPOSE

Sec. 2 (a) The Congress finds that—

(1) Present Federal bail practices are repugnant to the spirit of the Constitution and dilute the basic tenets that a person is presumed innocent until proven guilty by a court of law and that justice should be equal and accessible to all;

(2) Persons reasonably expected to appear at future proceedings should not be deprived of their liberty solely because of their financial inability to post bail;

(3) Respect for law and order is diminished when the attainment of pretrial liberty depends solely upon the financial status of an accused;

(4) Bail practices which rely primarily on financial consideration inevitably disadvantage persons and families of limited means;

(5) The high costs of unnecessary detention impose a severe financial burden on the taxpayers and deplete public funds which could be better used for other public purposes;

(6) Family and community ties, a job, residence in the community, and the absence of a substantial criminal record, are factors more likely to assure the appearance of a person than the posting of bail; and

(7) Accused persons should not be unnecessarily detained and subjected to the influence of persons convicted of crimes and the effects of jail life; nor

should their families suffer needless public derision and loss of support.

(b) The purpose of this Act is to revise the practices relating to bail to assure that all persons, regardless of their financial status, shall not needlessly be detained pending their appearance to answer charges, to testify, or pending appeal, when detention serves neither the ends of justice nor the public interest."

These findings and purpose for the passage of the Bail Reform Act of 1966 are confirmed and fortified by the comments, articles and disertations contained in the Congressional Record. (Vol. 112, Eighty Ninth Congress, 2d Session, pp. 12488-12504).

It may be assumed that similar considerations led the Seventy Third General Assembly of the State of Illinois to enact Article 110 of the Criminal Code. However, in so doing the legislature created an anomaly in law for it burdened one segment of the class gaining pretrial release with the cost of supporting the administration of the Illinois bail system.

The imposition of this bail cost upon those depositing 10% of bail under Section 110-7(f) is unconstitutional for it contravenes and violates the Due Process and Equal Protection of the Laws Clauses of the Fourteenth Amendment to the Constitution of the United States, for:

A.) It imposes bail costs on only one segment of the class gaining pretrial release;

B.) It imposes bail costs on the poor and non-affluent while no like costs are imposed on the rich and affluent;

C.) It imposes bail costs on the innocent.

A.

The Imposition Of Bail Costs On Only One Segment Of The Class Gaining Pretrial Release Contravenes And Violates The Equal Protection Of The Laws Clause Of The Fourteenth Amendment To The Constitution Of The United States.

The Illinois General Assembly imposes the entire burden of defraying the administration of bail bonds and deposits solely upon those who gain their pretrial release by depositing 10% of bail pursuant to Section 110-7 of the Illinois Criminal Code (App. B, v-vii).

No like costs are imposed on those released on their individual recognizance (Sec. 110-2) (App. B, iii) or those depositing the full amount of bail, stocks or bonds, or pledging real estate in double the amount of bail (Sec. 110-8) (App. B, vii-xi). There are by necessity; however, costs of administration attendant to each method of release; for as the defendants have stipulated "The actual cost of administering the provisions of Section 110-7 and 110-8 are substantially the same, but there may probably be a slightly greater cost of Section 110-8" (A. 21-22; Rec. C-17).

All who are accused of a crime and gain release from pretrial custody, under any of the aforementioned provisions, are rendered a service by the Clerk of the Court.

The imposition of bail costs on only one segment of that class, rendered a service by the Clerk, is in direct conflict with the decision of this Court in *Rinaldi* v. *Yeager,* 384 U.S. 305 (1966).

In *Rinaldi,* New Jersey, by statute, afforded all unable to purchase a transcript of their criminal trials, a free transcript for the purpose of appeal. New Jersey law

further provided that one incarcerated in the penitentiary after the affirmance of his conviction was required to repay the cost of said transcript. No corresponding burden of repayment was imposed on parolees, probationers or those given a suspended sentence. It should be noted, additionally, though not raised in *Rinaldi,* the New Jersey statute made no provision for the imposition of costs on a successful appellant (N.J.S.A. 2A: 152-18).

In holding that the New Jersey statute created an "invidious discrimination," this Court stated in *Rinaldi.* (p. 308):

> "The New Jersey law does not impose this financial burden upon all who have been convicted in its courts and whose appeals have been unsuccessful. It requires no repayment at all from a man who has received a suspended sentence or been placed on probation, regardless of how high his subsequent earnings may be. It requires no repayment at all from an unsuccessful appellant who has been sentenced only to pay a fine. Instead, the law fastens the duty of repayment only upon a single class of unsuccessful appellants—those who are confined in institutions. We find that the discriminatory classification imposed by this law violates the requirements of the Equal Protection Clause."

Likewise, the Illinois law does not impose the financial burden of bail costs on all who have been admitted to bail. It requires no payment at all from a man released on his individual recognizance (Sec. 110-2) or from a man who has posted the full amount of cash, stocks or bonds, or double the amount in real estate (Sec. 110-8). Instead, the law fastens the duty of payment upon a single segment of the class gaining pretrial release—those who utilize Section 110-7—and thus creates an equally invidious discrimination in violation of the requirements of the Equal Protection Clause.

The cost retention provision of Section 110-7(f) is therefore unconstitutional and must fall.

B.

The Imposition Of Bail Costs On The Poor And Non-Affluent While No Like Costs Are Imposed On The Rich And Affluent Contravenes And Violates The Due Process And Equal Protection Of The Laws Clauses Of The Fourteenth Amendment To The Constitution Of The United States.

This Court has consistently held that a person cannot be penalized in a quest for justice due to a lack of wealth. *Griffin* v. *Illinois,* 351 U.S. 12 (1956); *Gideon* v. *Wainwright,* 372 U.S. 335 (1963); *Douglas* v. *Green,* 363 U.S. 192 (1960); *Pointer* v. *Texas,* 380 U.S. 400 (1965); *Douglas* v. *California,* 372 U.S. 353 (1963); *Coppedge* v. *U.S.,* 369 U.S. 438 (1962); and *Milani* v. *Illinois,* 386 U.S. 12 (1967).

In relation to the *Griffin* doctrine, Mr. Justice Douglas in *Bandy* v. *U.S.,* 81 S. Ct., 197 (1960) (bail application) made it eminently clear that when discussing "richman-poorman", the poor man is not necessarily destitute, but rather, a man without "enough property to pledge for his freedom."

This concept was recognized by former Chief Justice Warren, who stated in relation to the proposed Bail Reform Act of 1966 (National Conference on Bail and Criminal Justice, May 27, 1964, pp. 12-13):

> "The proposed bills recognize that poverty is a relative concept and that the poverty of the accused must be measured in each case by reference to the particular need or service under consideration."

Poverty, therefore, in relation to bail, is merely whether one possesses sufficient assets to meet the bond set by the Court.

"A vast majority of our criminal defendants are indigent by an reasonable definition". (District of Columbia Bail Project—Georgetown Law Journal, Vol. 53, No. 3, Spring 1965, p. 679), and authority establishes that as the amount of bail increases the percentage of those able to obtain pretrial release significantly decreases.[3] As

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3. District of Columbia Bail Project—Georgetown Law Journal, Vol. 53, No. 3, Spring 1965, p. 684;

POSTING BOND

"Table II demonstrates the decreasing ability of defendants to post bond as bail amounts increase. While 57 per cent of those defendants whose bonds were set at $1,000 or less were able to post bond, only 12 per cent of those whose bonds were set at $5,000 or more were similarly able to obtain release. Table III, the ability to post bond by offense category, is presented as a further illustration of this point.

TABLE II

PERCENTAGE OF DEFENDANTS POSTING ORIGINAL BONDS BY AMOUNT

Bail Amounts	Number of Cases Bail Set	Percentage Posting Bail
$500 and under	130	74%
$600-$1,000	796	54%
$1,500	143	43%
$2,000	188	34%
$2,500	212	35%
$3,000	78	21%
$3,500-$4,500	49	22%
$5,000	186	16%
$7,500	23	4%
$10,000 & over	58	3%
Total	1,863	42%"

Justice Thomas E. Kluczynski and Justice Walter V. Schaefer, in their dissent in the instant case stated (A. 45; Rec. 8): "This Court must take judicial notice of the fact many defendants cannot afford to pay the full amount of bail." Accord.[4]

It was this concept of relative poverty which led to the passage of the Federal Bail Reform Act of 1966, and Article 110 of the Illinois Criminal Code. These statutory provisions enable those unable to afford the full amount of bail to exercise their right to pretrial freedom (*Stack* v. *Boyle*, 342 U.S. 1 (1951)), by depositing 10% of the full amount of bail.

Since many defendants in criminal cases simply lack "enough property" to deposit the full amount of bail, they have "no choice" but to deposit 10% or remain incarcerated and suffer the pitfalls attendant thereto. *Bandy* v. *U.S.*, 81 S. Ct. 197 (1960). Accord.[5]

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4. Bail Reform Act of 1966 (18 U.S.C. 3141-3152); Congressional Record (Vol. 112, Con. Rec. 89th Congress, Second Session pp. 12488-12505); S.H.A. Ch. 38, Sec. 110, Committee Comments; Attorney General's Committee on Poverty and the Administration of Criminal Judicial Procedure (U.S.C. Cong. and Admin. News 1966); National Conference on Bail and Criminal Justice, May 27, 1964.

5. Attorney General's Committee on Poverty and the Administration of Criminal Judicial Procedure, stated (U.S.C. Cong. and Admin. News, 1966, p. 2299): ". . . Studies have shown that failure to release has other adverse effects upon the accused's preparation for trial, retention of employment, relations with family, his attitude toward social justice, the outcome of the trial and the severity of the sentence . . ."

Upon these non-affluent, Illinois imposes a bail cost (Sec. 110-7(f)). No like cost is imposed by the Federal Act (18 U.S.C. 3146 (a)(3)). In addition, Illinois imposes no bail costs on the rich or affluent who can afford the full amount of bail (Sec. 110-8). Thus, those least able to afford it, the poor and non-affluent, who have no choice but to remain in jail or deposit 10% of bail, are unconstitutionally "penalized in a quest for justice due to a lack of wealth." *Griffin* v. *Illinois,* 351 U.S. 12 (1956).

C.

The Imposition Of Bail Costs On An Innocent Accused Contravenes And Violates The Due Process Clause Of The Fourteenth Amendment To The Constitution Of The United States.

Perhaps the most disconcerting aspect of the imposition of bail costs pursuant to Section 110-7(f) of the Illinois Criminal Code (App. B, vi) is that these costs are imposed upon an innocent person accused of a crime; who is put to the expense, disgrace and anguish of a trial and then found not guilty. He is then assessed a cost for exercising his right to release pending trial.

Ironically, one who gains pretrial release under Sections 110-2 (App. B, iii) or 110-8 (App. B, vii-xi) and is found guilty is burdened with no cost whatsoever.

In *Giaccio* v. *Pennsylvania,* 382 U.S. 399 (1966) costs were assessed by the jury against a defendant, who was acquitted of a misdemeanor, pursuant to a Pennsylvania statute. This Court held that the statute was so vague as to violate the due process clause of the Fourteenth Amendment.

In the case at bar we do not have a vague statute. Rather it is explicit in the Illinois statute that the burden

to support the entire administration of the bail bond system in Illinois falls on those released pursuant to Section 110-7 of the Illinois Criminal Code—whether guilty or innocent.

In *Giaccio,* Mr. Justice Stewart, in concurring with the majority opinion of the Court, stated (p. 405):

> ". . . In the present case it is enough for me that Pennsylvania allows a jury to punish a defendant after finding him not guilty. That, I think, violates the must rudimentary concept of due process of law."

Mr. Justice Fortas concurred for the same reason.

It is submitted that the principle enunciated in the aforementioned concurring opinions is the only reasonable application of the Constitution of the United States in relation to the present cause.

The exact nature of the cost imposed upon the acquitted defendant in *Giaccio* v. *Pennsylvania,* 382 U.S. 399, is not apparent from the opinion. However, if there is any question as to whether the bail cost imposed on innocent defendants in the State of Illinois are costs attendant to a criminal proceeding, one need but note the statement from the Attorney General's Committee on Poverty and the Administration of Criminal Justice Procedure Report, (U.S. Cong. and Admin. News, 1966, p. 2299):

> "The present system of monetary bail would be adequate if all could afford it. The facts, however, are to the contrary. The rich man and the professional criminal readily raise bail regardless of the amount. But it is the poor man, lacking sufficient funds, who remains incarcerated prior to trial. But the mere incarceration is not the only evil effect of the monetary

> bail system. Studies have shown that failure to release has other adverse effects upon the accused's preparation for trial, retention of employment, relations with his family, his attitude toward social justice, the outcome of the trial, and the severity of the sentence. For example, in preparation for his trial, the defendant who remains in jail does not have the same access to his counsel as the man free on bail. He is limited in his ability to collect witnesses for his defense. Often, he loses his employment, his family may become the subjects of welfare payments, and in many instances in the Federal system he becomes a financial burden to the Federal Government in that the Federal Government reimbureses local authorities when a defendant is incarcerated in a local jail."

Thus, pretrial release is not only an integral element of criminal justice, but perhaps the most important element, and any costs imposed upon the exercise of the right to bail is a cost attendant to the criminal proceedinf, and cannot constitutionally be imposed on an innocent accused.

CONCLUSION

John Schilb, individually and on behalf of all persons similarly situate, plaintiffs-appellants, have herein established that the statutory imposition of bail costs in Illinois contravenes and is in violation of the Due Process and Equal Protection of the Laws Clauses of the Fourteenth Amendment to the Constitution of the United States, and respectfully pray the decision of the Supreme Court of the State of Illinois be reversed.

Respectfully submitted,

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APPENDIX A

Amendment XIV

Constitution of the United States

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the

United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts in curred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

APPENDIX B

ARTICLE 110. BAIL

110—1. § 110-1. **Definitions.)** (a) "Security" is that which is required to be pledged to insure the payment of bail.

(b) "Surety" is one who executes a bail bond and binds himself to pay the bail if the person in custody fails to comply with all conditions of the bail bond.

110—2. § 110-2. **Release on Own Recognizance.)** When from all the circumstances the court is of the opinion that the accused will appear as required either before or after conviction the accused may be released on his own recognizance. A failure to appear as required by such recognizance shall constitute an offense subject to the penalty provided in Section 32—10 of the "Criminal Code of 1961," approved July 28, 1961, as heretofore and hereafter amended, for violation of the bail bond, and any obligated sum fixed in the recognizance shall be forfeited and collected in accordance with sub-section (g) of Section 110—7 of this Code.

This Section shall be liberally construed to effectuate the purpose of relying upon criminal sanctions instead of financial loss to assure the appearance of the accused.

110—3. § 110-3. **Issuance of Warrant.)** Upon failure to comply with any condition of a bail bond or recognizance the court having jurisdiction at the time of such failure may, in addition to any other action provided by law, issue a warrant for the arrest of the person at liberty on bail or his own recognizance.

110—4. § 110-4. **Bailable Offenses.)** (a) All persons shall be bailable before conviction, except when death is a possible punishment for the offense charged and the proof is evident or the presumption great that the person is guilty of the offense.

(b) A person charged with an offense for which death is a possible punishment has the burden of proof that he should be admitted o bail.

110—5. § 110-5. **Determining the Amount of Bail.)** (a) The amount of bail shall be:

(1) Sufficient to assure compliance with the conditions set forth in the bail bond;

(2) Not oppressive;

(3) Commensurate with the nature of the offense charged;

(4) Considerate of the past criminal acts and conduct of the defendant;

(5) Considerate of the financial ability of the accused.

(6) When a person is charged with an offense punishable by fine only the amount of the bail shall not exceed double the amount of the maximum penalty.

(c) When a person has been convicted of an offense and only a fine has been imposed the amount of the bail shall not exceed double the amount of the fine.

110—6. § 110-6. **Reduction or Increase of Bail.)**

(a) Upon application by the State or the defendant the court before which the proceeding is pending may increase or reduce the amount of bail or may alter the conditions of the bail bond.

(b) Reasonable notice of such application by the defendant shall be given to the State.

(c) Reasonable notice of such application by the State shall be given to the defendant, except as provided in subsection (d).

(d) Upon verified application by the State stating facts or circumstances constituting a breach or a threatened breach of any of the conditions of the bail bond the court may issue a warrant commanding any peace officer to bring the defendant without unnecessary delay before the court for a hearing on the matters set forth in the application. At the conclusion of the hearing the court may enter an order authorized by subsection (a).

110—7. § 110-7. **Deposit of Bail Security.)**

(a) The person for whom bail has been set shall execute the bail bond and deposit with the clerk of the court before which the proceeding is pending a sum of money equal to 10% of the bail, but in no event shall such deposit be less than $25.

(b) Upon depositing this sum the person shall be released from custody subject to the conditions of the bail bond.

(c) Once bail has been given and a charge is pending or is thereafter filed in or transferred to a court of competent jurisdiction the latter court shall continue the original bail in that court subject to the provisions of Section 110-6 of this Code.

(d) After conviction the court may order that the original bail stand as bail pending appeal or deny, increase or reduce bail.

(e) After the entry of an order by the trial court allowing or denying bail pending appeal either party may apply to the reviewing court having jurisdiction or to a justice thereof sitting in vacation for an order increasing

or decreasing the amount of bail or allowing or denying bail pending appeal.

(f) When the conditions of the bail bond have been performed and the accused has been discharged from all obligations in the cause the clerk of the court shall return to the accused, unless the court orders otherwise, 90% of the sum which had been deposited and shall retain as bail bond costs 10% of the amount deposited. However, in no event shall the amount retained by the clerk as bail bond costs be less than $5.

At the request of the defendant the court may order such 90% of defendant's bail deposit, or whatever amount repayable to defendant from such deposit, to be paid to defendant's attorney of record.

(g) If the accused does not comply with the conditions of the bail bond the court having jurisdiction shall enter an order declaring the bail to be forfeited. Notice of such order of forfeiture shall be mailed forthwith to the accused at his last know address. If the accused does not appear and surrender to the court having jurisdiction within 30 days from the date of the forfeiture or within such period satisfy the court that appearance and surrender by the accused is impossible and without his fault the court shall enter judgment for the State if the charge for which the bond was given was a felony or misdemeanor, or if the charge was quasi-criminal or traffic, judgment for the political subdivision of the State which prosecuted the case, against the accused for the amount of the bail and costs of the court proceedings. The deposit made in accordance with subsection (a) shall be applied to the payment of costs. If any amount of such deposit remains after the payment of costs it shall be applied to payment of the judgment and transferred to

the treasury of the municipal corporation wherein the bond was taken if the offense was a violation of any penal ordinance of a political subdivision of this State, or to the treasury of the county wherein the bond was taken if the offense was a violation of any penal statute of this State. The balance of the judgment may be enforced and collected in the same manner as a judgment entered in a civil action.

(h) After a judgment for a fine and court costs or either is entered in the prosecution of a cause in which a deposit had been made in accordance with subsection (a) the balance of such deposit, after deduction of bail bond costs, shall be applied to the payment of the judgment.

110—8. § 110-8. **Cash, Stocks, Bond and Real Estate as Security for Bail.)** (a) In lieu of the bail deposit provided for in Section 110—7 of this Code any person for whom bail has been set may execute the bail bond with or without sureties which bond may be secured:

(1) By a deposit, with the clerk of the court, of an amount equal to the required bail, of cash, or stocks and bonds in which trustees are authorized to invest trust funds under the laws of this State; or

(2) By real estate situated in this State with unencumbered equity not exempt owned by the accused or sureties worth double the amount of bail set in the bond.

b) If the bail bond is secured by cash or stocks and bonds the accused or sureties shall file with the bond a sworn schedule which shall contain:

(1) A list of the stocks and bonds deposited describing each in sufficient detail that it may be identified;

(2) The market value of each stock and bond;

(3) The total market value of the stocks and bonds listed;

(4) A statement that the affinat is the sole owner of the stocks and bonds listed and they are not exempt from execution;

(5) A statement that such stocks and bonds have not previously been used or accepted as bail in this State during the 12 months preceding the date of the bail bond; and

(6) A statement that such stocks and bonds are security for the appearance of the accused in accordance with the conditions of the bail bond.

(c) If the bail bond is secured by real estate the accused or sureties shall file with the bond a sworn schedule which shall contain:

(1) A legal description of the real estate;

(2) A description of any and all encumbrances on the real estate including the amount of each and the holder thereof;

(3) The market value of the unencumbered equity owned by the affiant;

(4) A statement that the affiant is the sole owner of such unencumbered equity and that it is not exempt from execution;

(5) A statement that the real estate has not previously been used or accepted as bail in this State during the 12 months preceding the date of the bail bond; and

(6) A statement that the retl estate is security for the appearance of the accused in accordance with the conditions of the bail bond.

(d) The sworn schedule shall constitute a material part of the bail bond. The affiant commits perjury if in the sworn schedule he makes a false statement which he does not believe to be true. He shall be prosecuted and punished accordingly, or, he may be punished for contempt.

(e) A certified copy of the bail bond and schedule of real estate shall be filed immediately by the court in the office of the registrar of titles or recorder of deeds of the county in which the real estate is situated and the State shall have a lien on such real estate from the time such copies are filed in the office of the registrar of titles or recorder of deeds. The registrar of titles or recorder of deeds shall enter, index and record (or register as the case may be) such bail bonds and schedules without requiring any advance fee, which fee shall be taxed as costs in the proceeding and paid out of such costs when collected.

(f) When the conditions of the bail bond have been performed and the accused has been discharged from his obligations in the cause, the clerk of the court shall return to him or his sureties the deposit of any cash, stocks or bonds. If the bail bond has been secured by real estate the clerk of the court shall forthwith notify in writing the registrar of titles or recorder of deeds and the lien of the bail bond on the real estate shall be discharged.

(g) If the accused does not comply with the conditions of the bail bond the court having jurisdiction shall enter an order declaring the bail to be forfeited. Notice of such order of forfeiture shall be mailed forthwith by the clerk of the court to the accused and his sureties at their last known address. If the accused does not appear and surrender to the court having jurisdiction within 30 days

from the date of the forefeiture or within such period satisfy the court that appearance and surrender by the accused is impossible and without his fault the court shall enter judgment for the State against the accused and his sureties for the amount of the bail and costs of the proceedings.

(h) When judgment is entered in favor of the State on any bail bond the State's Attorney shall have execution issued on the judgment forthwith and deliver same to the sheriff to be executed by levy on the cash, stocks or bonds deposited with the clerk of the court and the real estate described in the bail bond schedule. The cash shall be used to satisfy the judgment and costs and paid into the treasury of the municipal corporation wherein the bail bond was taken if the offense was a violation of any penal ordinance of a political subdivision of this State, or into the treasury of the county wherein the bail bond was taken if the offense was a violation of any penal statute of this State. The stocks, bonds and real estate shall be sold in the same manner as in execution sales in civil actions and the proceeds of such sale shall be used to satisfy all court costs, prior encumbrances, if any, and from the balance a sufficient amount to satisfy the judgment shall be paid into the treasury of the municipal corporation wherein the bail bond was taken if the offense was a violation of any penal ordinance of a political subdivision of this State, or into the treasury of the county wherein the bail bond was taken if the offense was a violation of any penal statute of this State. The balance shall be returned to the owier. The real estate so sold may be redeemed in the same manner as real estate may be redeemed after judicial or execution sales in civil actions.

(i) No stocks, bonds or real estate may be used or accepted as bail bond security in this State more than once in any 12 month period. As amended by act approved July 31, 1967. L. 1967, p. ——, H.B. No. 862.

110—9. § 110-9. **Taking of Bail by Peace Officer.)** When bail has been set by a judicial officer for a particular offense or offender any sheriff or other peace officer may take bail in accordance with the provisions of Section 110—7 or 110—8 of this Code and release the offender to appearance in accordance with the conditions of the bail bond, the Notice to Appear or the Summons. The officer shall give a receipt to the offender for the bail so taken and within a reasonable time deposit such bail so taken and within a reasonable time deposit such bail with the clerk of the court having jurisdiction of the offense.

110—10. § 110-10. **Conditions of Bail Bond.)** (a) If a person is admitted to bail before conviction the conditions of the bail bond shall be that he will:

(1) Appear to answer the charge in the court having jurisdiction on a day certain and thereafter as ordered by the court until discharged or final order of the court;

(2) Submit himself to the orders and process of the court; and

(3) Not depart this State without leave.

(b) If the defendant is admitted to bail after conviction the conditions of the bail bond shall be that he will:

(1) Duly prosecute his appeal;

(2) Appear at such time and place as the court may direct;

(3) Not depart this State without leave of the court and

(4) If the judgment is affirmed or the cause reversed and remanded for a new trial, forthwith surrender to the officer from whose custody he was bailed.

110—11. § 110-11. **Bail on a New Trial.)** If the judgment of conviction is reversed and the cause remanded for a new trial the trial court may order that the bail stand pending such trial, or reduce or increase bail.

110—12. § 110-12. **Notice of Change of Address.)** A person who has been admitted to bail shall give written notice to the clerk of the court before which the proceeding is pending of any change in his address within 24 hours after such change.

110—13. § 110-13. **Persons Prohibited from Furnishing Bail Security.)** No attorney at law practicing in this State and no official authorized to admit another to bail or to accept bail shall furnish any part of any security for bail in any criminal action or any proceeding nor shall any such person act as surety for any accused admitted to bail.

110—14. § 110-14. **Credit for Incarceration on Bailable Offense.)** Any person incarcerated on a bailable offense who does not supply bail and against whom a fine is levied on conviction of such offense shall be allowed a credit of $5 for each day so incarcerated prior to conviction except that in no case shall the amount so allowed or credited exceed the amount of the fine.

110—15. § 110-15. **Applicability of Provisions for Giving and Taking Bail.)** The provisions of Sections 110-7 and 110-8 of this Code are exclusive of other provisions of law for the giving, taking, or enforcement of bail. In all cases where a person is admitted to bail the provisions of Section 110-7 and 110-8 of this Code shall be applicable.

However, the Supreme Court may, by rule or order, prescribe a uniform schedule of amounts of bail in specified traffic and conservation cases, quasi-criminal offenses, and misdemeanors. Such uniform schedule may provide that the cash deposit provisions of Section 110-7 shall not apply to bail amounts established for alleged violations punishable by the fine alone, and the schedule may further provide that in specified traffic cases a valid Illinois chauffeur's or operator's license must be deposited, in addition to 10% of the amount of the bail specified in the schedule. As amended by act approved Aug. 14, 1967. L. 1967, p. ——, S.B. No. 1168.

APPENDIX C

88th CONGRESS
2d Session

.....S. 2840.....

IN THE SENATE OF THE UNITED STATES
May 14 (legislative day, March 30), 1964

Mr. Ervin (for himself Mr. Hruska, Mr. Fong, Mr. Bayh, Mr. Williams of New Jersey, and Mr. Johnson) introduced the following bill; which was read twice and referred to the Committee on the Judiciary.

A BILL

To further implement the constitutional right to bail by permitting persons admitted o bail to make a cash deposit with the court in lieu of providing securities or other collateral security.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) chapter 207 of title 18, United States Code, is amended by adding at the end thereof a new section as follows:

"**§3147. Cash deposit**

"(a) Whenever the amount of bail has been fixed in the case of any person charged with an offense against the United States, such person shall execute a bond for his appearance, and, in lieu of providing other collateral security or sureties, may deposit in the registry of the court a sum equal to 10 per centum of the amount of bail

so fixed. Upon the deposit of such sum such person shall be released from custody subject to the conditions of this bond.

"(b) If there is no breach of condition of a bond given by any person as provided in subsection (a), the court shall release such person from the obligation of the bond, but shall retain 10 per centum of the sum deposited by such person to defray bail bond costs. The balance of such deposit shall, no judgment for court costs and/or fine being entered against such person, be returned to him. In the event judgment for court costs and/or fine is entered against such person, the balance of such deposit shall be first applied to the payment of such judgment.

"(c) If there is a breach of condition of a bond given by any person as provided in subsection (a), the court shall declare a forfeiture of the full amount of the bail fixed in the case of such person. Notice of the forfeiture shall be mailed to such person at his last known address, and, if such person does not appear as required within thirty days after the mailing of such notice and the forfeiture is not set aside by the court, the court shall render judgment of default against such person in the full amount of the bail. The court may direct that any such forfeiture be set aside if, under all the circumstances, it appears that justice does not require the enforcement thereof. Any judgment of default against such person shall be enforced by all available processes of the court, and the amount deposited by such person in the registry of the court shall be applied to the payment of costs and the balance thereof shall be applied to the judgment.

"(d) Nothing in this section shall limit in any way the application of section 3146 of this title to any person."

(b) The analysis of chapter 207 of title 18, United States Code, is amended by inserting at the end thereof the following:

"3147. Cash deposit."